

### **REMARKS**

This Amendment is filed in response to the Office Action dated October 10, 2003. At that time, claims 1-11 and 13-51 were pending in the application. In the Office Action, the Examiner allowed claim 46. The Examiner further indicated that claims 15-20, 26-29, 34-35, 40-42, 44-45 and 50 would be allowable if rewritten in independent form including all intervening limitations. The Examiner also indicated that claims 21, 30, 36, and 43 would be allowable if written to overcome the rejection under 35 U.S.C. §112, second paragraph, and rewritten in independent form including all intervening limitations.

However, claims 48-49 and 51 were rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 4,480,853 to Ando et al. (hereinafter "Ando"). Claims 1-2, 5-8, 13-14, 22-23, 31-33, and 47 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,530,594 to Nakajima et al. (hereinafter "Nakajima") in view of Ando. The Examiner further rejected claims 3-4, 9-11, 24-25, and 37-39 under 35 U.S.C. §103(a) as being unpatentable over Nakajima in view of Ando, and further in view of U.S. Patent No. 6,113,146 to Mautsch et al. (hereinafter "Mautsch").

By this paper, claims 21, 30, 36, 43, 48, and 51 have been amended. Accordingly, claims 1-11 and 13-51 are presented for reconsideration by the Examiner.

### **REJECTION OF CLAIMS 21, 30, 36, AND 43 UNDER 35 U.S.C. §112, SECOND PARAGRAPH**

The Examiner rejected claims 21, 30, 36, and 43 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention. *See* Office Action page 2.

Claims 21, 30, 36, and 43 have been amended to recite features of the bracket in conformity with the preamble which recites the invention as a bracket. Accordingly, the

Applicants respectfully request that this rejection be withdrawn. Support for these amendments can be found in the specification, page 10, line 21 – page 11, line 9.

**REJECTION OF CLAIMS 48-49 AND 51 UNDER 35 U.S.C. §102(b)**

The Examiner rejected claims 48-49 and 51 under 35 U.S.C. §102(b) as being anticipated by Ando. *See* Office Action page 3. The Applicants respectfully traverse this rejection.

It is well settled that a claim is anticipated under 35 U.S.C. § 102(b) only if “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants submit that the rejected claims, as amended, are not anticipated by Ando because the Ando does not disclose every element recited in claims 48-49 and 51.

As a result of this paper, claims 48-49 and 51 include the limitation that the attachment means perform the function of clamping a portion of the inflatable curtain. Support for this amendment can be found in the specification, page 9, lines 12-14. Ando does not disclose any structure that can perform the function of “clamping” an inflatable curtain, let alone any corresponding “attachment means” structure and equivalents thereof disclosed in the specification of the present application.

Ando discloses a resin cover 52 or plate-shaped core member 43 having a webbing insert slot 50 for allowing a seatbelt to slidably extend therethrough. *See* Ando, col. 3, lines 21-24. In describing its seatbelt support device, Ando states, “[T]he webbing 12...passes through the webbing insert slot 50. In this case, the frictional resistance is considerably low because the webbing 12 *slides on the surface* of the synthetic resin cover 52.” Ando, col. 3, lines 46-50 (emphasis added). The resin cover 52 and the slot 50 of Ando are unable to perform the function of “clamping a portion of the inflatable curtain” because the device in Ando cannot hold tightly, bind or constrict an inflatable curtain. Rather the device of Ando permits slidable movement of a

seatbelt through the webbing slot 50. Accordingly, Ando does not disclose each and every limitation as set forth in claims 48-49 and 51, and consequently, cannot anticipate under §102(b).

Furthermore, the Examiner improperly interpreted claims 48-49 and 51 to read on any structure for performing the function recited in the claims. For example, the Examiner stated that Ando discloses "attachment means...that could be used for engaging an inflatable curtain if desired as functionally recited." *See* Office Action, page 3. However, claims 48-49 and 51 are recited in means-plus-function format, requiring the interpretation of these claims under 35 U.S.C. §112, sixth paragraph. According to M.P.E.P. §2181 an Examiner may not interpret means plus function limitations "as reading on any prior art means or step which performed the function specified in the claim." If a claim invokes 35 U.S.C. §112, sixth paragraph, it must be interpreted to cover corresponding structure disclosed in the specification and equivalents thereof. *Id.*

As the Examiner has interpreted claims 48-49 and 51 improperly, and the claims, as amended, do not read on Ando (even as functionally recited), the claims are not anticipated under §102(b). Withdrawal of the rejection is respectfully requested.

**REJECTION OF CLAIMS 1-2, 5-8, 13-14, 22-23, 31-33, AND 47 UNDER 35 U.S.C.**

**§103(a)**

The Examiner rejected claims 1-2, 5-8, 13-14, 22-23, 31-33, and 47 under 35 U.S.C. §103(a) as being unpatentable over Nakajima in view of Ando. *See* Office Action page 4. The Applicants respectfully traverse this rejection.

In order to reject a claim under §103, the Examiner must show that the subject matter as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made. 35 U.S.C. §103(a). In making this determination, the Supreme Court held in *Graham v. John Deere*, 383 U.S. 1 (1966), the Examiner must (1) determine the scope and content of the prior art; (2) ascertain the differences between the prior art and the claimed

invention; (3) determine the level of ordinary skill in the pertinent art; and (4) evaluate evidence of secondary considerations. MPEP §2141. In determining the scope and content of the prior art and the differences between the prior art and the claimed invention, the Examiner has the burden of establishing a *prima facie* case of obviousness. MPEP §2142 (“If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.”).

**A Prima Facie Case of Obviousness Has Not Been Made**

The Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness. A *prima facie* case of obviousness is established only if the Examiner shows that (1) there is some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there is a reasonable expectation of success; and (3) the prior art teaches or suggests all of the claim limitations. *See id.*

Nakajima discloses an airbag case 50 for housing an airbag. *See Nakajima*, Figure 3. The case 50 has two upper wall portions 50E and 50D that allow the case 50 to be mounted to a roof side rail 28, while also engaging the airbag 16 (at 16D). *See Nakajima*, col. 4, lines 42-53, and Figure 3. Unlike the claimed invention, Nakajima does not disclose a bushing in rotatable communication with an attachment plate.

Ando, on the other hand, discloses a seat belt holder (webbing supporting device 10) having a bobbin 32 and spacer 38. Unlike the claimed invention, Ando does not disclose a mounting bracket *for an inflatable curtain*. Neither does Ando disclose a pair of attachment plates for engaging an inflatable curtain.

1. **There is No Motivation to Combine Nakajima and Ando**

According to MPEP §2143, to establish *prima facie* obviousness, there must be some

suggestion or motivation to modify the reference or to combine reference teachings to arrive at the claimed invention. "The teaching or suggestion to make the claimed combination ... must be found in the prior art, not in applicant's disclosure." MPEP §2143, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." MPEP §2143.01, citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In the present case, there is no objective teaching in the prior art that suggests the desirability of the combination. One skilled in the art would not have been motivated to combine isolated teachings from the prior art references to arrive at the claimed invention without the benefit of hindsight from Applicants' disclosure and claims.

The device described in Ando is not designed to engage an inflatable curtain. Rather the device in Ando is designed to engage seat belt webbing. *See* Ando, col. 3, lines 21-24. The device of Ando has a plate-shaped core member 43 provided with a slot 50 "for allowing the webbing 12 to extend therethrough." *Id.* There is no disclosure in Ando as to how an inflatable curtain could be engaged with the plate-shaped core member 43 via the slot 50.

If an inflatable curtain were "engaged" with the slot, by passing a portion of the curtain through the slot, the inflatable curtain could not function as intended because the device in Ando cannot function as a mounting bracket for an inflatable curtain. Upon inflation, the curtain would slide through the slot because the slot is configured to allow webbing to slide therethrough. *See* Ando, col. 3, lines 46-50. Consequently, the inflatable curtain would not be held in position adjacent the side structure of the vehicle and would, therefore, provide no protection for an occupant. There is simply no impetus to combine the seat belt holder of Ando with a mounting bracket.

Furthermore, if the description of the airbag module housing of Nakajima is construed to include a mounting bracket (upper wall portions 50D, 50E), the device of Nakajima falls in the

category described in the Background section of the present application. The module of Nakajima has a long, narrow configuration (*See* Figure 1) that would be awkward and cumbersome to install. *See* Application, page 3, lines 6-19. Furthermore, Nakajima suggests nothing about the desirability of preventing torque from installation tools being transferred to the “mounting brackets.” *See* Application, page 3, lines 20-25. Rather, the device of Nakajima would simply suffer from the same defects as the airbag modules described in the Background section of the present application. As there is no discussion in Nakajima regarding the problem of preventing torque being transferred to the “mounting brackets,” there is no motivation to combine the disclosure of Nakajima with that of Ando. Withdrawal of the rejection is respectfully requested.

2. The Cited References Teach Away From Their Combination

It is well established that if the references themselves teach away from their combination, then such teaching away by itself defeats any assertion of *prima facie* obviousness. *See* MPEP §2145; *Winner Int’l Royalty Corp. v. Wang*, 53 USPQ2d 1580, 1587 (Fed. Cir. 2000); *In re Grasselli*, 218 USPQ 769, 779 (Fed. Cir. 1983). The seat belt holder 10 of Ando includes a bobbin 32 and spacer 38 so that the seat belt holder 10 can rotate about a bolt 34 with a change in driving posture or change in physical build of an occupant. *See* Ando, col. 2, lines 46-51, col. 3, lines 54-62.

Ando teaches the desirability of the movement of the plate about the axis of the bolt. “[T]he webbing support device is *intentionally rotated* about the axis of the bolt...so that a proper arrangement of the webbing can be obtained.” Ando, col. 1, lines 26-29 (emphasis added). “[T]he webbing supporting device 10 can rotate about the bolt...” Ando, col. 2, lines 49-50. “[T]he plate-shaped core member 43 is *desirably movable*...” Ando, col. 4, lines 1-2 (emphasis added).

However, the use of a bushing in the attachment plates of the claimed invention is to address the problem of the undesirability of movement of the mounting bracket when installing an inflatable curtain. *See* Application, page 3, lines 20-25 (“Another problem...with existing mounting brackets is that...installation...caus[es] it to twist and crimp which can negatively affect the folded configuration of the airbag curtain. Furthermore, an additional installer may be necessary to hold the airbag curtain to keep it from rotating...”); Page 4, lines 17-18 (“When these points of attachment are cinched tight with a slight rotation, the deployment of the airbag can be negatively affected.”).

The present invention, therefore, seeks to prevent twisting of the mounting bracket, while facilitating rotation of the bushing within the bracket when fastened to a vehicle. Ando, on the other hand, teaches the desirability of movement of the plate about the bobbin. The bobbin of Ando is a similar structure to the bushing that is taught performing an opposite function from that of the claimed invention. Consequently, one with skill in the art would not have been led to combine Nakajima with Ando because Ando teaches away from their combination. Withdrawal of the rejection is respectfully requested.

**REJECTION OF CLAIMS 3-4, 9-11, 24-25 AND 37-39 UNDER 35 U.S.C. §103(a)**

The Examiner rejected claims 3-4, 9-11, 24-25 and 37-39 under 35 U.S.C. §103(a) as being unpatentable over Nakajima in view of Ando, and further in view of Mautsch. *See* Office Action, page 5. The Applicants respectfully traverse this rejection.

This rejection is improper for the reasons noted above in connection with the proposed combination of Nakajima and Ando. Additionally, the Applicants submit that the proposed combination is also improper because there is no teaching to combine Nakajima with Mautsch.

Mautsch was cited by the Examiner for its alleged disclosure of a bushing (plastic form parts 14) that “snap” and has “protrusions” on the bushing parts. *See* Office Action, pages 5-6 (apparently referring to Figure 1 of Mautsch). However, the disclosure of Figure 1 in Mautsch

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does not cure the problems associated with combining Nakajima and Ando. Furthermore, the specification of Mautsch does not describe the function of the plastic form parts 14, except that it reduces noise and receives a "vehicle part." See Mautsch, col. 2, lines 12-14, 43-46.

As Mautsch does not provide an enabling disclosure for the plastic form parts 14 to function as a bushing, a snap, or have protrusions to engage a fastener, it cannot be combined with Nakajima to form a rejection under §103(a). See *Paperless Accounting Inc. v. Bay Area Rapid Transit Sys.*, 804 F.2d 659, 665 (Fed. Cir. 1986) ("[A] reference 'must sufficiently describe the claimed invention to have placed the public in possession of it...[E]ven if the claimed invention is disclosed in a printed publication, that disclosure will not suffice as prior art if it was not enabling.'"). Since Mautsch does not teach or disclose the use of a bushing with a mounting bracket for receiving a fastener, or suggest the desirability of combining the disclosure of Nakajima with that of Ando, the combination of Nakajima, Ando, and Mautsch is improper. Withdrawal of this rejection is respectfully requested.

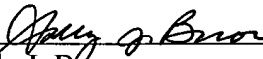
### **CONCLUSION**

In view of the foregoing, the Applicants submit that claims 1-11 and 13-51 are in condition for allowance. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.



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